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U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE:



Office: Newark

Date:

FEB 28 2003

IN RE: Applicant:



APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Newark, New Jersey, who certified her decision to the Administrative Appeals Office for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), 212(a)(2)(B), and 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), § 1182(a)(2)(A)(i)(II), § 1182(a)(2)(B), and § 1182(a)(2)(C), and determined that he did not qualify for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802).

(B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless

of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

In his decision, the district director listed the applicant's convictions from February 11, 1975 to June 16, 1995. That list will not be repeated here. The list and the conviction records, however, include: 2 convictions for possession of heroin; 1 conviction for possession of marijuana; 1 conviction for possession of cocaine; 1 conviction for possession of narcotic equipment; convictions for possession of burglary tools, vehicle theft, aggravated assault, simple assault, criminal mischief, possession of a weapon; and lastly, conviction for possession of a controlled and dangerous substance (cocaine) with intent to distribute, and possession of cocaine within 1000 feet of school property, for which he was sentenced to serve eight years in prison.

Possession of burglary tools is a crime involving moral turpitude if accompanied by an intent to use the tools to commit a turpitudinous offense such as larceny. Matter of Serna, 20 I&N Dec. 579 (BIA 1992); Matter of S-, 6 I&N Dec. 769 (BIA 1955). Theft or larceny, whether grand or petty, is a crime involving moral turpitude. Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966). Likewise, aggravated assault is a crime involving moral turpitude. Matter of P-, 7 I&N Dec. 376 (BIA 1956); Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967); Matter of Baker, 15 I&N Dec. 50 (BIA 1974). Additionally, criminal mischief is a crime involving moral turpitude. See Matter of M-, 3 I&N Dec. 272 (BIA 1948) (Malicious Destruction of Property). The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his convictions of crimes involving moral turpitude.

The applicant is also inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his convictions of possession of marijuana, heroin, and cocaine, and possession of drug paraphernalia. Additionally, the applicant is inadmissible to the United States, pursuant to section 212(a)(2)(C) of the Act, based on his conviction of possession with intent to distribute (traffic) cocaine. The applicant is also inadmissible, pursuant to section 212(a)(2)(B) of the Act, based on his convictions of 2 or more offenses for which the aggregate sentences to confinement actually imposed were 5 years or more. There is no waiver available to an alien found inadmissible under these sections

except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

**ORDER:** The district director's decision is affirmed.